

Letter of Findings Number: 04-20130037/38/39/40
Negligence Penalty
For the Periods 2008 through 2011

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana manufacturer of various industrial coating products such as liquid paints, powder coatings and vacuum metalizing products. The Indiana Department of Revenue (the "Department") conducted a sales and use tax audit of Taxpayer's three Indiana locations for the tax years 2008 through 2011. As a result of the Department's audits, Taxpayer was assessed additional use tax, penalty, and interest for the years at issue. The Department's audit covered individual location accounts as well as the consolidated account (thus the multiple docket numbers referenced in this Letter of Findings). Taxpayer protested the assessment of penalty for the years at issue. This Letter of Findings ensues addressing all of the protested dockets. Further facts will be supplied as required.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Taxpayer protests the imposition of the negligence penalties assessed pursuant to the Department's sales and use tax audit of Taxpayer for the periods 2008 through 2011. Taxpayer states that it was not willfully neglectful of its sales and use tax obligations as evidenced by the audits. Taxpayer therefore asks that the Department abate the assessed negligence penalties.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. **Factors which may be considered in determining reasonable cause include, but are not limited to:**

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) **previous audits** or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

(Emphasis added).

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not paying sales tax or self-assessing and remitting the use tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and

penalty arose. [45 IAC 15-11-2\(c\)](#).

Taxpayer argues that it did not demonstrate willful neglect in its treatment of the taxability of certain items as these items could reasonably have been assumed to be part of the production process.

This is not Taxpayer's first sales and use tax audit. While some of the non-production items on which Taxpayer was assessed use tax could reasonably have been assumed to be part of the production process, there were also other items which were clearly not part of the production process. Given that this is not Taxpayer's first sales and use tax audit, Taxpayer has not made an affirmative showing of reasonable cause for the manner in which it evaluated the taxability of the protested items. Therefore, the Department finds that Taxpayer has not made an affirmative showing of reasonable cause for not remitting use tax for the tax years 2008 through 2011 and therefore the negligence penalties will not be abated.

FINDING

Taxpayer's protest is respectfully denied.

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